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In the Matter of the Appeal of  
[REDACTED]

from a determination by the Albany County  
Department of Social Services

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**DECISION  
AFTER  
FAIR  
HEARING**

**JURISDICTION**

Pursuant to Section 22 of the New York State Social Services Law (hereinafter Social Services Law) and Part 358 of Title 18 NYCRR, (hereinafter Regulations), a fair hearing was held on December 5, 2012, in Albany County, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

[REDACTED]

For the Social Services Agency

Kathy Tremont, Fair Hearing Representative

**ISSUE**

Was the Agency's determination to accept the Appellant's application for Medical Assistance for Appellant subject to a monthly spenddown of excess income of \$453.00 on the grounds that the Appellant's household has income which exceeds the applicable Medical Assistance income standards correct?

Was the Agency determination that the Appellant's household was not eligible for Family Health Plus on the grounds that the Appellant has a health insurance plan correct?

**FINDINGS OF FACT**

An opportunity to be heard having been afforded to all interested parties and evidence having been taken and due deliberation having been had, it is hereby found that:

1. The Appellant, age 51, applied for Medical Assistance on September 21, 2012.

2. By notice dated October 2, 2012, the Agency informed the Appellant of its determination to accept the Appellant's application for Medical Assistance for Appellant subject to a monthly spenddown of excess income of \$453.00 on the grounds that the Appellant's household has income which exceeds the applicable Medical Assistance income standards. The notice also advised the Appellant of the Agency's determination that the Appellant's household was not eligible for Family Health Plus on the grounds that the Appellant has a health insurance plan.

3. The Appellant's household's monthly income is as follows:

<b>Household Member</b>	<b>Source</b>	<b>Unearned Income</b>
Appellant	SSD	\$1,275.00

**Gross Unearned Income \$1,275.00**

4. The Appellant's monthly Medicaid budget is calculated as follows:

<b>Gross Monthly Unearned income</b>	\$1,275.00	
<u>Subtract</u>		
\$20 Disregard	- \$20.00	
Health Insurance premium	- \$0.00	
<b>Net Monthly Unearned Income</b>		<b>\$1,255.00</b>
<b>Gross Monthly Earned income</b>	<b>\$0.00</b>	
<b>Total Net Income</b>		<b>\$1,255.00</b>
Medical Assistance Standard of Need		-\$792.00
<b>Available Monthly Excess Income</b>		<b>\$463.00</b>

5. On October 9, 2012, the Appellant requested this fair hearing.

### **APPLICABLE LAW**

A person who is sixty-five years of age or older, blind or disabled who is not in receipt of Public Assistance and has income or resources which exceed the standards of the Federal Supplemental Security Income Program (SSI) but who otherwise is eligible for SSI may be eligible for Medical Assistance, provided that such person meets certain financial and other eligibility requirements under the Medical Assistance Program. Social Services Law Section 366.1(a)(5).

To determine eligibility, an applicant's or recipient's net income must be calculated. In addition, resources are compared to the applicable resource level. Net income is derived from gross income by deducting exempt income and allowable deductions. The result - net income - is compared to the statutory "standard of need" set forth in Social Services Law Section 366.2(a)(7) and 18 NYCRR Subpart 360-4. If an applicant's or recipient's net income is less than

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or equal to the applicable monthly standard of need, and resources are less than or equal to the applicable standard, full Medical Assistance coverage is available.

The amount by which net income exceeds the standard of need is considered "excess income". If the applicant or recipient has any excess income, he/she must incur bills for medical care and services equal to or greater than that excess income to become eligible for Medical Assistance. In such instances Medical Assistance coverage may be available for the medical costs which are greater than the excess income. If a person has expenses for in-patient hospital care, the excess income for a period of six months shall be considered available for payment. For other medical care and services the excess income for the month or months in which care or services are given shall be considered available for payment of such care and services. 18 NYCRR 360-4.1, 360-4.8.

Administrative Directive 87 ADM-4 provides detailed instructions regarding the appropriate application of medical bills to offset excess income so that an individual can become eligible for Medical Assistance. This offsetting process is called "spenddown". Said Directive further provides that whenever a spenddown is indicated, the Agency is required to include a copy of the letter "Explanation of the Excess Income Program" along with the Notice to the recipient whenever an acceptance, intended change, denial, or discontinuance indicates a spenddown liability situation. Administrative Directive 87 ADM-4 provides that some over-the-counter drugs and medical supplies such as bandages and dressings may be applied to offset determined excess income if they have been ordered by a doctor or are medically necessary. Bills for cosmetics and other non-medical items may not be so applied.

Regulations at 18 NYCRR 360-4.6 provide for additional income disregards for applicants and recipients who are 65 years of age or older, certified blind or certified disabled. These disregards are to be applied in the following order:

- the first \$20 per month of any unearned income. Only one \$20 disregard is permitted per couple. A certified blind or certified disabled child living with parents is entitled to a separate \$20 disregard from his/her total unearned income. If a person's unearned income is under \$20, the balance will be deducted from earned income;
- the first \$65 of earned income;
- health insurance premiums;

Local social services districts now provide a "Pay-In" program, established under provisions of Section 366(2)(b)(3) under which Medical Assistance recipients having excess income may simply remit the amount of the excess to the local district each month, and receive an uninterrupted authorization for full coverage for all costs (at the Medicaid rate) of all necessary medical services by participating providers.

Pursuant to section 369-ee of the Social Services Law, a person is eligible to receive health care services under the Family Health Plus Program if he or she:

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- (i) resides in New York state and is at least age nineteen, but under sixty-five years of age;
- (ii) is not eligible for medical assistance solely due to income or resources or is eligible for medical assistance only through the application of excess income toward the costs of medical care and services;
- (iii) does not have equivalent health care coverage under insurance or equivalent mechanisms;

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- (v)(A) in the case of a parent or stepparent of a child under the age of twenty-one who lives with such child, has gross family income equal to or less than the applicable percent of the federal income official poverty:
  - (I) January 1, 2001 – 120% and
  - (II) October 1, 2001 – 133% and
  - (III) October 1, 2002 – 150%; or
- (B) in the case of an individual who is not a parent or stepparent living with his or her child under the age of twenty-one, has gross family income equal to or less than 100% of the federal income official poverty line for a family of the same size.

In order to be eligible for Family Health Plus, 19 and 20-year-olds living with their parents, must have gross family income equal to or less than the following federal income poverty lines for a family of the same size:

- o effective January 1, 2001, 120 percent; and
- o effective October 1, 2001, 133 percent; and
- o effective October 1, 2002, is 150 percent.

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In order to be eligible for Family Health Plus, 19 and 20 year-olds not residing with their parents, must have gross family income equal to or less than 100 percent of the federal income official poverty line for a family of the same size. 1 OMM/ADM-6

There are Additional requirements in order to be eligible for Family Health Plus relating to the existence of health care coverage and insurance. Pursuant to GIS 09 MA/027, effective January 1, 2010, eligibility shall be determined without regard to resources..

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Every person determined eligible for or receiving Family Health Plus coverage must enroll in a family health insurance plan.

100% of the Federal Poverty Line for a household of one is \$931.00 per month in the year 2012.

### **DISCUSSION**

The Appellant contests the adequacy of his Medical Assistance. The Agency's evidence indicates that the Appellant's monthly gross SSD benefit is \$1,275.00. A budget was calculated and it was determined that the Appellant's net income (gross income less Medical Assistance deductions) is over the Medical Assistance income limit by \$453.00. This amount is the Appellant's spenddown.

The Appellant said that he gets a net SSD benefit of \$698.00. His gross benefit is reduced due to child support or alimony. The Appellant said that he cannot afford his spenddown requirement with all of his expenses. He stated that he will get Medicare in March, but he cannot wait because he has doctors to see.

Based on the testimony and evidence in the record, as the budget that is stated above indicates, the Agency's determination to accept the Appellant's application for Medical Assistance for Appellant subject to a monthly spenddown of excess income of \$453.00 on the grounds that the Appellant's household has income which exceeds the applicable Medical Assistance income standard was correct. Child support and alimony payments deducted from Social Security benefits are not allowable for purposes of Medicaid eligibility.

With respect to the Agency's determination that the Appellant was not eligible for Family Health Plus, although the Agency stated the grounds as being that the Appellant has health insurance, the evidence indicates that the Appellant's gross income exceeds the Family Health Plus income limit. Therefore, the Appellant is not eligible for Family Health Plus.

### **DECISION**

The Agency's determination to accept the Appellant's application for Medical Assistance for Appellant subject to a monthly spenddown of excess income of \$453.00 on the grounds that the Appellant's household has income which exceeds the applicable Medical Assistance income standards was correct.

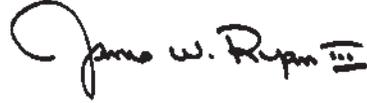
The Agency determination that the Appellant was not eligible for Family Health Plus was correct.

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DATED: Albany, New York  
01/03/2013

NEW YORK STATE  
DEPARTMENT OF HEALTH

By

A handwritten signature in black ink, appearing to read "James W. Ripan". The signature is written in a cursive style with a large initial "J" and a horizontal line at the end.

Commissioner's Designee